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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,441	05/31/2001	Steven J. Rychnovsky	17858/120103	8892
7590	04/16/2004		EXAMINER	
Roxana Wizorek Bryan Cave LLP 211 North Broadway, Suite 3600 St. Louis, MO 63102			HENLEY III, RAYMOND J	
			ART UNIT	PAPER NUMBER
			1614	

DATE MAILED: 04/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/871,441	RYCHNOVSKY, STEVEN J.	
	Examiner	Art Unit	
	Raymond J Henley III	1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on April 1, 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55 and 57-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-55 and 57-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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CLAIMS 1-55 AND 57-60 ARE PRESENTED FOR EXAMINATION

Applicant's Remarks filed February 24, 2004 and Amendment filed April 1, 2004 have been received and entered into the application. Accordingly, claims 1 and 57 have been amended.

Claim Rejection - 35 USC § 103

Claims 1-56 and 58-60 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Lamuraglia (WO 01/24825 A2), already of record, for the reasons of record as set forth in the previous Office action dated May 9, 2003.

Applicant's arguments have been carefully considered, but fail to persuade the Examiner of error in his determination of obviousness.

In particular, applicant has argued that in the present claims, the light wavelength is limited at its upper limit to "shorter than 610 nm" while in Lamuraglia, wavelengths of from 660 nm to 690 nm are taught. It is further argued that in Lamuraglia, the lower limit of "about 660 nm" would not encompass the presently claimed upper limit of 610 nm because Lamuraglia advocates the use of long wavelengths to avoid blood absorption of light and applicant has shown in their remarks at page 3 that at wavelengths shorter than 610 nm, there is a strong blood absorption of light.

In response thereto, it is first noted that applicant's upper limit is not limited to "shorter than 610 nm" as argued. Rather, the range in claims 1 and 57 reads "about 440 to 610 nm". This would include 610 nm. Also, while it is agreed that Lamuraglia prefers to avoid blood absorption of light (see Lamuraglia at page 10, lines 31-32), Lamuraglia also teaches that

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wavelengths of light of from 350 to 900 nm are useful (page 10, lines 30-31) and it is well settled that all embodiments taught by a reference as being effective are teachings that may be relied upon in support of a finding of non-obviousness. See MPEP 2123.

Accordingly, the claims are deemed to remain properly rejected and none are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond J Henley III whose telephone number is 571-272-0575. The examiner can normally be reached on M-F, 8:30 am to 4:00 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel can be reached on 571-272-0584. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Raymond J Henley III
Primary Examiner
Art Unit 1614

Apr. 12, 2004